IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4160 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DAIRY FIELD LTD.

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER

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Appearance:

1. Special Civil Application No. 4160 of 2004

MR RC JANI for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 21/06/2004

ORAL JUDGEMENT

Rule. Learned advocate Mr.PJ Mehta appears and waives service of notice of rule on behalf of the respondent. At the request of the learned advocates

appearing for the parties, the petition is taken up for final disposal forthwith.

2. A short question that is involved in this petition is regarding the legality of the ex-parte order passed by the respondent dated 30th June 2003 as well as the order passed by the same authority in Review Application filed by the petitioner being order dated 3rd March, 2004. From the perusal of the order dated 30th June, 2003, it is borne out that the respondent had given several opportunities to the petitioner to present its case. However, since nobody appeared for the petitioner, the respondent authority passed the said impugned order directing the petitioner to deposit certain amount towards provident fund dues. The petitioner, thereafter, filed Review Application, however, the same came to be rejected by the order dated 3rd March 2004 recording, inter alia, that the proceedings were fixed on numerous occasions and that the Officer of the respondent had also visited the establishment on 3rd April 2002 and 10th April 2002.

3. Learned advocate Shri RC Jani for the petitioner submits that the unit of the petitioner was facing severe financial crisis and that working of the factory was in doll-drums since quite some time. He further points out that due to the petitioner being unable to pay electricity dues, electric connection of the factory premises of the petitioner came to be disconnected on 12th December 2001. He therefore submits that non-appearance on the part of the petitioner was due to the crisis being faced in the factory and that there was no intention not to co-operate with the respondent in the inquiry under section 7-A of the Employees Provident Fund and Misc. Provisions Act.

4. Shri P.J.Mehta, learned advocate for the respondent submits that the respondent had sufficient opportunity to the petitioner to appear before the Assistant Provident Fund Commissioner. However, it did not avail of the opportunities and the order dated 30th June 2003 is therefore proper and legal. He further submits that the order passed on Review Application of the petitioner also records detailed reasons for its rejection and the same therefore may not be interfered with. Mr.Mehta further submits that appeal is provided under the provisions of the Employees Provident Fund and Misc. Provisions Act against the impugned orders and further submits that though at the relevant time the Appellate Tribunal was not functioning since the Presiding Officer was not appointed, now that the

Tribunal is available, the petitioner should prefer the statutory appeal.

5. I have considered the submissions made on behalf of the parties. Though it is true that the respondent had adjourned the proceedings on numerous occasions and that the petitioner was not present to co-operate with the proceedings, the petitioner has explained its absence and pointed out the financial difficulties and other administrative problems in the factory arising out of the financial crisis and the consequent disconnection of electricity supply. The petitioner has, pursuant to the order passed by this Court on 5th April 2004, also deposited an amount of Rs.6 lacs with the respondent which according to the petitioner is the outstanding provident fund dues.

6. In above view of the matter, I am of the opinion that the petitioner deserves an opportunity to present its case before the authorities. It is true that the appellate Tribunal is now available and in ordinary course of events, this Court would direct a party to file appeal provided under the statute. However, in the facts of the present case, in view of the fact that the matter is being remanded for fresh hearing and that considering the fact that the petitioner deposited Rs.6 lacs towards the provident fund dues, in exercise of the discretionary powers under Article 226 of the Constitution of India, I entertain this petition and remand the matter to the respondent authority for fresh consideration after giving an opportunity to the petitioner to present its case. It is also directed that the petitioner shall co-operate with the inquiry proceedings.

7. In view of the above discussion, the impugned orders at Annexure A and C are quashed and set aside. The matter is remanded to the respondent authority for fresh hearing and passing of appropriate orders in accordance with law. Rule is made absolute accordingly. In the facts of the case, I direct that the petitioner shall pay cost of Rs.5,000/- (Rupees five thousand only) to the respondent.

(Akil Kureshi, J.)
(vjn)